

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

MARCIE PENNINGTON,)	
)	
Plaintiff,)	
v.)	Case No. CIV-22-368-SPS
)	
MARTIN O'MALLEY,¹)	
Commissioner of the Social)	
Security Administration,)	
)	
Defendant.)	

**OPINION AND ORDER AWARDING
ATTORNEY'S FEES TO THE PLAINTIFF UNDER THE EAJA**

Plaintiff Marcie Pennington was the prevailing party in this action under the Social Security Act following an Opinion and Order by this Court entered on March 20, 2024, remanding the case to the Defendant for further administrative action. (Do, 25). The Commissioner has no objection to the Plaintiff's agreed upon request for \$7,000.00 in fees. Plaintiff originally requested \$7,894.50 in fees. However, upon further conferral, the parties agreed that an EAJA award of \$7,000.00 (a reduction of \$894.50 from the original requested amount) is reasonable in this case.

Upon review of the record herein, the Court finds that the agreed amount is reasonable and that the Commissioner should be ordered to pay it to the Plaintiff as the prevailing party herein. *See* 28 U.S.C. § 2412(d)(1)(A) ("Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases

¹ On December 20, 2023, Martin J. O'Malley became the Commissioner of Social Security. In accordance with Fed. R. Civ. P. 25(d), Mr. O'Malley is substituted for Kilolo Kijakazi as the Defendant in this action.

sounding in tort)[.]”); *see also Manning v. Astrue*, 510 F.3d 1246, 1251 (10th Cir. 2007) (“The EAJA therefore permits attorney’s fees reimbursement to financially eligible prevailing parties, who make a proper application, and not to their attorneys.”).

Accordingly, IT IS ORDERED that the Plaintiff’s Motion for Award of Attorney Fees Pursuant to the *Equal Access to Justice Act* (Doc. 27) is hereby GRANTED in part, and the Government is hereby ordered to pay the agreed-upon \$7,000.00 fee award to the Plaintiff as the prevailing party herein. IT IS FURTHER ORDERED that if the Plaintiff’s attorney is subsequently awarded any fees pursuant to 42 U.S.C. § 406(b)(1), said attorney shall refund the smaller amount of such fees to the Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

DATED this 27th day of June, 2024.



STEVEN P. SHREDER
UNITED STATES MAGISTRATE JUDGE